

TO: Legislative Colleagues  
FROM: Senator Lena C Taylor & Representative Joe Parisi  
DATE: Tuesday, February 23, 2010  
RE: **COSPONSORSHIP: LRB 09-3330/1 The Uniform Collateral Consequences of Conviction Act (U3CA)**

**DEADLINE: Wednesday, March 3<sup>rd</sup> 5pm**

Colleagues,

We are introducing the Uniform Collateral Consequences of Conviction Act for consideration by the Legislature. This Act was approved as a uniform state law on June 15<sup>th</sup> of last summer by the Uniform Law Commission. Posted below is a link to the action and release from the ULC announcing the approval of this Act. Wisconsin Supreme Court Justice Ann Walsh Bradley was a member of the committee charged with creating the uniform law.

#### **BACKGROUND TO THE UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT (U3CA)**

Wisconsin has not been alone in working to set the foundation for pathways that successfully reintegrate individuals charged with a crime back into society in order to reduce recidivism, gain meaningful employment, and enjoy a happy, industrious life. Across the country, however, many defendants and family members of defendants know nothing of the collateral consequences that the law can impose. The common belief is that after completing their sentence – jail time, community service, probation, extended supervision or fines – an individual has fully paid his debt to society.

Unfortunately, many individuals have learned that after serving their sentence, they continue to face many punitive consequences that may obstruct their goal of successfully rejoining society. We hope to inform and educate all accused individuals of the potential collateral consequences they may face and what relief can be sought after successfully reintegrating into society as they make plea decisions and as courts make sentencing decisions.

#### **WHAT IS A COLLATERAL CONSEQUENCE?**

Under current law, individuals convicted of certain crimes may face additional sanctions after completing their sentence. Some of these sanctions include, but are not limited to:

- A bar from licenses, permits or jobs
- Inability to get or keep benefits such as public housing or education
- Being unable to possess a firearm
- Having the government take your property

These collateral consequences have potentially devastating effects that can last a lifetime. Each of us can find an example in our own communities of people that

punished daily for mistakes and violations of the law that they committed years ago, despite having fully completed their sentences.

Please see the attached Legislative Council Memo for a definition of a collateral consequence and some examples that would be identified in Wisconsin Statutes.

### **HOW DOES THE U3CA WORK & HOW DOES IT HELP PEOPLE?**

Under current law, these consequences may last long after a person completes their sentence. These consequences are also scattered throughout various statutes, rules and the State Constitution, which makes compiling a list of potential collateral consequences nearly impossible.

This bill aims to inform criminally charged individuals about the specific collateral consequences that may be imposed on them in the future as a result of their conviction and/or sentencing. This legislation would require that such a person receive notice that a conviction, adjudication or guilty plea would result in legal consequences beyond imprisonment, probation, extended supervision, assessments or forfeitures and fines, at the time they are charged with an offense.

This legislation would require the Legislative Council and LRB to work with the joint review committee on criminal penalties to compile a comprehensive list of the collateral consequences by researching all statutes, administrative rules and provisions under the state constitution. This list would be freely available on the internet, and would periodically be updated by the committee.

This legislation would require the various pertinent elements of the justice system to provide the following information to an individual when he or she is charged and sentenced:

- That collateral consequences may apply because of the conviction or adjudication;
- that there may be a way to obtain relief from collateral consequences; and
- the internet web address of for the composite list of all collateral consequences.

### **DOES THE U3CA AFFECT CRIMINAL PENALTIES?**

This act in ***no way affects any criminal penalty***. No period of incarceration, probation, extended supervision or any forfeiture or fine can be changed or modified under the provisions of this bill. This is made clear in the attached Legislative Council memo.

### **HOW DOES THE U3CA PROVIDE RELIEF?**

Under the act, a person may have relief ordered from a collateral consequence at sentencing by the sentencing judge or after three years have passed from the completion of confinement a person may petition the court for orders of relief or a certificate of restoration of rights.

### **THE U3CA ADDRESSES MANY OF THE PROBLEMS ASSOCIATED WITH CCAP**

Many persons seeking employment, housing, or licensure are subject to a criminal and civil background search through the CCAP program. While the U3CA does not expunge or remove any conviction from CCAP, it will also show that a person has had relief ordered or received a certificate of restoration of rights. On page 13 of the draft at line 22, the use of this certificate to overcome employment discrimination and other actions is outlined.

### **WHAT ABOUT VICTIMS AND PUBLIC SAFETY?**

The rights of victims to be present at any matter involving an order for relief, a certificate of restoration of rights, or the revocation of either is fully maintained as found in current law (page 14, lines 4-7).

In order to receive relief and/or a certificate the judge must find ***all of the following*** to be true:

1. The individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support.
2. The individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
3. No criminal charges are pending against the individual.
4. Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

### **EFFECT OF PARDON CLARIFIED**

Added to this uniform act is a statutory clarification of the effect of a pardon by a governor (page 12, lines 12-15). Enclosed in the attached Legislative Council memo is an explanation of the current ambiguity in Wisconsin law about the effect of a pardon by the governor.

We hope that you will read the bill draft thoroughly, the attached memo, the information at the below link and join us in cosponsoring this powerful act. This bill can help individuals in our state gain meaningful employment and overcome years of disqualification, each of which serves to improve the public welfare.

If you wish to co-sponsor this legislation, please call Eric in Senator Taylor's office at 6-5810 or Mike in Rep. Parisi's office at 6-5342 or reply to this email by Wednesday, March 3<sup>rd</sup> at 5pm.

Uniform Law Commission Links:

<http://www.nccusl.org/nccusl/DesktopModules/NewsDisplay.aspx?ItemID=217>

[http://www.nccusl.org/nccusl/uniformact\\_summaries/uniformacts-s-uccca.asp](http://www.nccusl.org/nccusl/uniformact_summaries/uniformacts-s-uccca.asp)

### ***Analysis by the Legislative Reference Bureau***

This bill addresses the issue of collateral consequences to a conviction or finding of delinquency. The bill defines a collateral consequence as a disqualification or a penalty, disability, or disadvantage imposed by operation of law that a person suffers as a result of being convicted of, or found delinquent for, an offenses. A collateral consequence does not include imprisonment, probation, imposition of fine, assessment, or forfeiture, or costs of prosecution.

The bill requires the legislative reference bureau and the legislative council staff, under the direction of the joint review committee on criminal penalties, to identify and create a list of collateral consequences that accrue under state law and administrative rules. Under the bill, a person who is charged with or indicted for an offense must receive information about collateral consequences when he or she is charged or indicted.

If a person is convicted or adjudicated delinquent, the bill requires the sentencing court to inform the person that collateral consequences may apply as a result of the conviction or adjudication and that there may be ways to obtain relief from the collateral consequences and to let the person know when he or she may vote and where he or she may find assistance for relief from collateral consequences from a government or nonprofit agency. Under the bill, if a court fails to provide this information to a person, or if the person does not receive information about collateral consequences when he or she is charged or indicted, that is not grounds to invalidate a plea or a conviction or adjudication of delinquency or grounds for money damages or a claim for relief from any collateral consequence.

Under the bill, a conviction or adjudication of delinquency in another state has the same effect as a conviction or adjudication of delinquency in this state for an offense that has the same elements. A pardon or vacation of a conviction or adjudication of delinquency that occurs in another state has the same effect as a pardon or vacation of a conviction or adjudication of delinquency in this state.

Under the bill, a person who has been convicted of, or adjudicated delinquent for, an offense may petition the sentencing court, at the time of sentencing, or the court for the county in which he or she lives, after sentencing, for an order of limited relief from one or more collateral consequences that relate to the person's employment, education, housing, public benefits, or occupational licensing. If the court hearing the petition determines that granting the petition of relief would materially assist the person in obtaining employment, education, housing, public benefits, or occupational licensing and not put the public at unreasonable risk, the court may order that certain collateral consequences not apply to the person. The court may not relieve a person of his or her duty to register as a sex offender or, if the person is eligible to apply for an occupational driver's license, reinstate driving privileges.

Under the bill, any person may petition the court for the county in which he or she lives for a certificate of restoration of rights relieving collateral consequences after three

years have passed since the person's most recent conviction or adjudication of delinquency or three years have passed since the person was released from confinement, whichever occurs later. The bill requires the court to consider several factors, including the person's criminal record and public safety, and allows the court to grant a complete or partial restoration of rights relieving collateral consequences. In addition, the bill requires a court to issue a certificate of restoration of full rights if a person has been pardoned by a governor.